

1 Alla Gulchina SBN: 307014

2 **Price Law Group, APC**

3 86 Hudson Street

4 Hoboken, NJ 07030

5 T. 818-600-5566

6 alla@pricelawgroup.com

7 *Attorney for Plaintiff,*

8 *Rebecca Gottschalk*

9
10
11 **UNITED STATES DISTRICT COURT**
12 **WESTERN DISTRICT OF PENNSYLVANIA**
13

14 REBECCA GOTTSCHALK,

15 Plaintiff,

16 v.

17 CREDIT ONE BANK, N.A.,

18 Defendant.

Case No.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

(Unlawful Debt Collection Practices)

19 **COMPLAINT FOR DAMAGES**

20 Plaintiff, Rebecca Gottschalk (“Plaintiff”), through her attorneys, alleges the
21 following against Credit One Bank, N.A., (“Defendant”):

22 **INTRODUCTION**

- 23 1. Count I of Plaintiff’s Complaint is based upon the Telephone Consumer
24 Protection Act (“TCPA”), 47 U.S.C. § 227. The TCPA is a federal statute
25

that broadly regulates the use of automated telephone equipment. Among other things, the TCPA prohibits certain unsolicited marketing calls, restricts the use of automatic dialers or prerecorded messages, and delegates rulemaking authority to the Federal Communications Commission (“FCC”).

2. Count II of Plaintiff’s Complaint is based upon Pennsylvania Fair Credit Extension Uniformity Act (“FCEUA”), 73 P.S. § 2270 *et seq*, which prohibits debt collectors from engaging in abusive, deceptive and unfair practices in connection with the collection of consumer debts.
3. Count III of Plaintiff’s Complaint is based upon Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”) 73 P.S. § 201-1 *et seq*, which prohibits unfair or deceptive acts or practices.
4. Count IV of Plaintiff’s Complaint is based upon the Invasion of Privacy - Intrusion upon Seclusion, as derived from § 652B of the Restatement (Second) of Torts § 652B prohibits an intentional intrusion, “physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns... that would be highly offensive to a reasonable person.”

JURISDICTION AND VENUE

5. Subject matter jurisdiction of the Court arises under 47 U.S.C. § 227 *et seq*., 28 U.S.C. § 1331.
6. Diversity jurisdiction is proper pursuant to 28 U.S.C. § 1332.

1 7. Venue is proper pursuant to *28 U.S.C. 1391(b)(1)* in that a substantial part
2 of the events or omissions giving rise to the claim occurred in this District.

3 8. Defendants transact business here, therefore, personal jurisdiction is
4 established.
5

6 **PARTIES**

7 9. Plaintiff is a natural person residing in the County of Butler, State of
8 Pennsylvania.
9

10 10. Plaintiff is a “consumer” as defined by 73 P.S. § 2270.3 and a “person” as
11 defined by 73 P.S. §201-2(2).

12 11. Defendant is a creditor engaged in the business of loan servicing with its
13 principal place of business located in Las Vegas, NV. Defendant can be
14 served with process at 6901 S. Cimarron Road, Las Vegas, NV 89113.
15

16 12. Defendant engages in the practice of lending and collection of funds owed to
17 it and is a creditor as defined by 73 P.S. § 2270.3 and sought to collect a
18 consumer debt from Plaintiff.
19

20 **FACTUAL ALLEGATIONS**

21 13. Defendants are attempting to collect a debt from Plaintiff.

22 14. In an attempt to collect an alleged debt, in or around October 2018,
23 Defendant began placing calls to Plaintiff on her cellular phone number
24 ending in 5774.
25

1 15. The calls placed by Defendant mainly originated from phone numbers: (412)
2 785-2914, (412) 785-2868, (412) 785-2861, (412) 785-2921, (412) 785-
3 2810, (878) 999-8857, (412) 785-2817, (412) 291-9528, (412) 291-9578,
4 (412) 291-9689, (412) 291-9541, (412) 291-9702, (412) 291-9542, (412)
5 291-9592, (412) 785-1313, (412) 785-1344, and (412) 785-1282.
6

7 16. On or about October 3, 2018, at 11:30 a.m., Plaintiff answered a collection
8 call from Defendant; Plaintiff heard a pause before the collection agent began
9 to speak, indicating the use of an automated telephone dialing system.
10

11 17. Defendant informed Plaintiff that it was attempting to collect a debt relating
12 to her Credit One account.

13 18. Plaintiff explained she could not make a payment because she was in the
14 process of switching jobs and requested to be contacted in writing only and
15 not to be called any further. Despite Plaintiff's request not to be contacted,
16 Defendant continued to call Plaintiff.
17

18 19. Between October 4, 2018 and December 16, 2018, Defendant called Plaintiff
19 no less than four hundred and twenty-four (424) times.
20

21 20. On or about December 17, 2018 Plaintiff answered a second collection call
22 from Defendant; Plaintiff heard a pause before the collection agent began to
23 speak, indicating the use of an automated telephone dialing system.
24
25

1 21. Defendant informed Plaintiff that it was attempting to collect a debt relating
2 to her Credit One account.

3 22. Plaintiff again explained she could not make a payment because she was
4 experiencing financial hardships and requested that all future contact be in
5 writing only and not to be called any further.
6

7 23. Plaintiff's phone would often ring between one (1) and nine (9) times a day
8 with calls from Defendant.

9 24. For example, Defendant called Plaintiff eight (8) times on October 11, 2018,
10 November 19, 2018, December 7, 2018, and nine (9) times on December 11,
11 2018.
12

13 25. Defendant also called Plaintiff seven (7) times in a day on more than twenty
14 (20) separate days, and six (6) times in a day on more than fifteen (15)
15 separate days;
16

17 26. Defendant consistently called Plaintiff around the same time every day,
18 indicating the use of a predictive dialer.

19 27. For example, Defendant called Plaintiff at 11:20 a.m. (October 4, 2018),
20 11:15 a.m. (October 5, 2018), 11:35 a.m. (October 10, 2018), 11:00 a.m.
21 (October 11, 2018), and 11:28 a.m. (October 19, 2018).
22

23 28. Plaintiff works two jobs to support herself and her ailing mother.
24
25

1 29. Plaintiff's second job is overnight which requires her to sleep during the day.

2 On numerous occasions Defendant's calls disrupted her sleep.

3 30. Plaintiff also suffers from high blood pressure, high cholesterol and
4 hyperthyroidism; all conditions which require medication and are
5 exacerbated by stress.
6

7 31. The frequency and volume of the calls initiated by the Defendant routinely
8 cause disruption to her work and personal life.
9

10 32. Defendant's incessant calls not only induced stress, but also caused
11 increased anxiety due to the daily calls to her cellular phone.

12 33. As a result of Defendant's conduct, Plaintiff has sustained actual damages
13 including but not limited to, emotional and mental pain and anguish.
14

15 **COUNT I**

16 **Defendant's Violations of the TCPA, 47 U.S.C. § 227**

17 34. Plaintiff incorporates by reference all of the above paragraphs of this
18 Complaint as though fully stated herein.

19 35. Defendant violated the TCPA. Defendant's violations include, but are not
20 limited to the following:

21 (a) Within four years prior to the filing of this action, on multiple
22 occasions, Defendants violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii)
23 which states in pertinent part, "It shall be unlawful for any person
24 within the United States . . . to make any call (other than a call made
25

1 for emergency purposes or made with the prior express consent of the
2 called party) using any automatic telephone dialing system or an
3 artificial or prerecorded voice — to any telephone number assigned to
4 a . . . cellular telephone service . . . or any service for which the called
5 party is charged for the call.
6

7 (b) Within four years prior to the filing of this action, on multiple
8 occasions, Defendants willfully and/or knowingly contacted Plaintiff at
9 Plaintiff's cellular telephone using an artificial prerecorded voice or an
10 automatic telephone dialing system and as such, Defendant knowing
11 and/or willfully violated the TCPA.
12

13 36. As a result of Defendants' violations of 47 U.S.C. § 227, Plaintiff is entitled
14 to an award of five hundred dollars (\$500.00) in statutory damages, for each
15 and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds
16 that Defendant knowingly and/or willfully violated the TCPA, Plaintiff is
17 entitled to an award of one thousand five hundred dollars (\$1,500.00), for
18 each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47
19 U.S.C. § 227(b)(3)(C).
20
21

22 **COUNT II**

23 **(Pennsylvania Fair Credit Extension Uniformity Act 73 P.S. § 2270)**

24 37. Plaintiff incorporates herein by reference all of the above paragraphs of the
25 complaint as though fully set forth herein at length.

1 38. Defendant violated the FCEUA. Defendant's violation includes, but are not
2 limited to, the following:

3 (a) Defendant violated FCEUA P.S. 73 § 2270.4(b)(2)(i) which prohibits
4 contact "at any unusual time or place or a time or place known, or which
5 should be known to be inconvenient to the consumer;
6

7 (b) Defendant violated FCEUA P.S. § 2270.4(b)(4)(v) which prohibits
8 "causing a telephone to ring or engaging any person in telephone
9 conversation repeatedly or continuously with intent to annoy, abuse or
10 harass any person at the called number"; and
11

12 (c) Defendant violated FCEUA P.S. § 2270.4 by collecting or attempting to
13 collect a consumer debt without complying with the provisions of
14 Sections 1692b to 1692j, inclusive, of...Title 15 of the United States
15 Code (Fair Debt Collection Practices Act).
16

17 (i) Defendant violated FCEUA P.S. § 2270.4 by violating 15
18 U.S.C. § 1692d by engaging in conduct, the natural
19 consequence of which is to harass, oppress or abuse any
20 person in connection with the collection of the alleged debt;
21

22 (ii) Defendant violated FCEUA P.S. § 2270.4 by violating 15
23 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or
24 engaging Plaintiff in telephone conversations repeatedly;
25

(iii) Defendant violated FCEUA P.S. § 2270.4 by violating 15 U.S.C. § 1692f by using unfair or unconscionable means in connection with the collection of an alleged debt.

39. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

40. As a result of the foregoing violations of the FCEUA, Defendant is liable to Plaintiff for declaratory judgment that Defendant's conduct violated the FCEUA, actual damages, statutory damages, and attorneys' fees and costs.

COUNT III

(Pennsylvania Unfair Trade Practices and Consumer Protection Law 73 P.S. § 201)

41. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated in herein.

42. Defendant violated the UTPCPL. Defendant's violation includes, but are not limited to the following:

(a) Defendant violated UTPCPL P.S. § 201-2(4)(xxi) by engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

43. Defendant called Plaintiff from different telephone numbers with her local area code in order to create a perception that it was a local caller in order to force Plaintiff to answer the phone.

1 44. As a result of the foregoing violations of the UTPCPL, Defendant is liable to
2 Plaintiff for declaratory judgment that Defendant's conduct violated the
3 UTPCPL, actual damages, and attorneys' fees and costs.

4
5 **COUNT IV**
6 **Defendant's Invasion of Privacy**
7 **(Intrusion upon Seclusion)**

8 45. Plaintiff incorporates herein by reference all of the above paragraphs of this
9 complaint as though fully set forth herein at length.

10 46. Defendant violated Plaintiff's privacy. Defendant's violations include, but
11 are not limited to, the following:

12 (a) Defendant intentionally intruded, physically or otherwise, upon
13 Plaintiff's solitude and seclusion by engaging in harassing phone calls
14 in an attempt to collect on an alleged debt despite numerous requests
15 for the calls to cease.

16
17 (b) Defendants conduct would be highly offensive to a reasonable person
18 as Plaintiff received calls that interrupted Plaintiff's work and sleep
19 schedule.

20
21 (c) Defendant's acts, as described above, were done intentionally with the
22 purpose of coercing Plaintiff to pay the alleged debt.
23
24
25

1 47. As a result of Defendant's violations of Plaintiff's privacy, Defendant is
2 liable to Plaintiff for actual damages. If the Court finds that the conduct is
3 found to be egregious, Plaintiff may recover punitive damages.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff, Rebecca Gottschalk, respectfully requests
6 judgment be entered against Defendant, Credit One Bank, N.A., for the following:
7

- 8 A. Declaratory judgment that Defendants violated the TCPA;
9 B. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B), 47 U.S.C. §
10 227(b)(3)(C) and 73 P.S. § 2270.5(c);
11 C. Actual damages pursuant to 73 P.S. § 2270.5(c);
12 D. Actual and punitive damages resulting from the invasion of privacy;
13 E. Costs and reasonable attorneys' fees pursuant to 73 P.S. § 201-9.2(a);
14 F. Awarding Plaintiff any pre-judgment and post-judgment interest as
15 may be allowed under the law; and
16 G. Any other relief that this Honorable Court deems appropriate.
17

18 **DEMAND FOR JURY TRIAL**

19 Please take notice that Plaintiff demands a trial by jury in this action.
20

21
22
23 **RESPECTFULLY SUBMITTED,**

24 **PRICE LAW GROUP, APC**
25

1 Date: March 11, 2019

2 By: /s/Alla Gulchina
3 Alla Gulchina (SBN 307014)
4 86 Hudson Street
5 Hoboken, NJ 07030
6 T: (818) 600-5566
7 F: (818) 600-5466
8 E: alla@pricelawgroup.com
9 *Attorney for Plaintiff,*
10 *Rebecca Gottschalk*
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25